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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,324	04/04/2007	Lewis George Graddon	FPHCR 109NP	3633
29995 7590 01/23/2012 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER YOUNG, RACHEL T				
ART UNIT		PAPER NUMBER		
3771				
NOTIFICATION DATE		DELIVERY MODE		
01/23/2012		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Office Action Summary****Application No.**

10/575,324

**Applicant(s)**

GRADON ET AL.

**Examiner**

RACHEL YOUNG

**Art Unit**

3771

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 5) ☒ Claim(s) 61-65, 67, 68, 70 and 72-81 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 61-65, 67, 68, 70 and 72-81 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☒ The drawing(s) filed on 10 April 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-SB08)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Amendment***

1. This office action is responsive to the preliminary amendment filed on 8/13/10. As directed by the amendment: claims 1-60, 66, 69 and 71 have been canceled, claims 61-62, 64-65, 68, 70, 73, and 78-79 have been amended, and new claims 80-81 have been added. Thus, claims 61-65, 67-68, 70 and 72-81 are presently pending in the application.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the conduit hanging below the gases inlet (claim 70) and then also being supported above the headgear (dependent claim 62) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

3. Claim 62 is objected to because of the following informalities: Claim 61 recites on line 3 "each of said aims", which is suggested to be corrected to --each of said arms--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 62 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention without undue experimentation. Applicant recites in claim 70 that the conduit hangs

vertically below the gases outlet and is there supported by a support strap, however in claim 62 applicant recites that the conduit is supported above the headgear. These are contradictory limitations and are not supported in the specification nor the drawings.

Appropriate correction is required.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 65 and 70 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 65, ll. 2 recites "rigid pad", which lacks proper antecedent basis.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 70, 72-74, 76-79, 64, 67 and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ging in view of Jestrabek-Hart.

Regarding claim 70, in fig. 1 Ging discloses a hollow body (40, fig. 6b), a gases inlet (opening to hollow body) in the hollow body and a sealing member (face contacting portion of 40, Page 12, para 171) that rests against the face of a user in use, that

supplies gases to the user (Page 3, para 27), a conduit 310 supplying the gases to the interface, the conduit attached to an inlet to the gases inlet, a headgear (140, 88, 138, 96) attached to the interface and around the head of the user. Ging is silent regarding a support strap attached to the headgear that forms a loop to connect to and support the conduit. However, Jestrabek-Hart teaches a support strap (Fig. 11A) attached to the headgear, the support strap forming a loop to connect to and support the conduit (Fig. 11A). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ging's headgear with a support straps attached to the headgear that forms a loop to connect and support the conduit, as taught by Jestrabek-Hart, for the purpose of providing added support to the conduit and comfort to the user. The modified Ging discloses that the support strap connects to the conduit below the gases inlet (Ging's conduit 310 goes downward) and the support strap supporting the conduit and the conduit hanging away from the headgear and mask (conduit extends downward away from mark and headgear).

Regarding claim 72, the modified Ging discloses that the support strap is a sling connecting to the headgear and the conduit as described in claim 70 above.

Regarding claim 73, the modified Ging discloses that the support strap is a sliding strap that connects to the headgear and the conduit, allowing a sliding connection between the headgear and the sliding connection reduces drag and other forces on the mask due to the conduit moving. Jestrabek-Hart's support strap can allow a slight amount of sliding of the conduit and also takes some load off of the mask providing support to the mask.

Regarding claim 74, in fig. 1 Ging discloses that there is a sliding connection 128 between the headgear 140 and the interface when the interface is engaged with the user.

Regarding claim 76, the modified Ging of claim 73 discloses that the headgear attaches to the interface by a sliding strap.

Regarding claim 77, Ging discloses that the headgear includes a transverse strap 96, and the modified Ging discloses that the support strap connected to the transverse strap and extending below the gases inlet as described in the rejection of claim 70.

Regarding claim 78, the modified Ging of claim 70 discloses that first end of the support strap connects to one side of the headgear, a second end of the support strap connecting to an opposite side of the headgear as the first end of the support strap, the strap extending below the gases inlet, the strap arranged to form a loop and connect to the conduit below the gases inlet.

Regarding claim 79, the modified Ging discloses and interface, a support strap that that transfers load on the interface to the headgear that is slides relative to the interface to reduce forces on the mask due to downward drag from the conduit, but is silent regarding that the interface includes at least one engaging clip, the top part of the support strap including a mid-section intended to reciprocate with the engaging clip. However, Jestrabek-Hart teaches an engaging clip 23 and the top part of the support strap including a mid-section intended to reciprocate with the engaging clip in fig. 16. Therefore, it would have been obvious to one of ordinary skill in the art at the time the

invention was made to modify Ging's interface with an engaging clip that allows the a support strap to reciprocate with it, as taught by Jestrabek-Hart, for the purpose of providing better support to the mask.

Regarding claim 64, the modified Ging discloses that the headgear includes a forward substantially rigid part (92 Page 6, para 120, ll. 18-20 Ging) and a backward soft part (84, Page 6, para 120, ll. 7-8 Ging).

Regarding claim 67, the modified Ging discloses that the backward soft part is formed of a stretchable, breathable material (Page 6, ¶ 120, ll. 7-8 Ging).

Regarding claim 80, the modified Ging discloses that the headgear is connected to the interface by two sliding straps (both 88 that cross each other), the sliding straps prevent the mask from being pulled from a user's face and prevent the sealing member from being dislodged (the headgear keeps the mask and sealing member tight to the user).

11. Claims 61 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ging/Jestrabek-Hart, as applied to claim 70 above, in further view of Kwok (6,044,844).

Regarding claim 61, the modified Ging discloses headgear with a transverse strap (90 Ging), but is silent regarding a support portion receiving the conduit. However, in fig. 3, Kwok teaches a support portion 20 receiving a conduit 27. It would have been obvious to one of ordinary skill in the art at the time the invention was made



to modify the modified Ging's transverse strap with a support portion, as taught by Kwok, for the purpose of providing support to the conduit and comfort to the patient.

Regarding claim 63, the modified Ging discloses that the support portion is an elongate member capable of restraining the conduit (20, Fig. 3 Kwok).

12. Claim 65 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ging/Jestrabek-Hart, as applied to claims 70 and 64 above, in further view of Yewer, Jr. (5,586,969).

Regarding claim 65, the modified Ging discloses a substantially rigid forward part (92 Ging), but is silent regarding a removable padding layer. However, in fig. 4 Yewer teaches an adjustment means 14 and removable padding layer 12. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the modified Ging's forward and backward part with a removable padding layer, as taught by Yewer, for the purpose of providing comfort to the user.

13. Claim 68 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ging/Jestrabek-Hart as applied to claim 36 above in view of Gill (5,087,118).

Regarding claim 68, the modified Ging discloses that the headgear includes a substantially rigid forward part 92 and tightening means 150 that allows adjustment of the backward soft part 84, but is silent regarding that the tightening means is a length of elastic attached to a forward substantially rigid part and extending over the backward soft part. However, in fig. 1 Gill teaches an elastic tightening means (20 Col. 4, ll. 10)

attached to a forward part 26 and a backward soft part (30 Col. 4, ll. 44-45) and the tightening means extends over (a portion of) the backward soft part. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the modified Ging's tightening means with an elastic cord extending over a soft backward part, as taught by Gill, for the purpose of providing comfort and easy adjustment for the user.

14. Claim 75 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ging/Jestrabek-Hart as applied to claim 70 above in view of Berthon-Jones (2006/0118119).

Regarding claim 75, the modified Ging discloses headgear and a transverse strap 84, but is silent regarding that the transverse headgear strap is connected to a forehead rest by an adjustable glider mechanism. However Berthon-Jones teaches that a transverse strap (624, Fig. 15) is connected to a forehead rest (800, Fig. 15) by an adjustable glider mechanism (634, Fig. 15) Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the modified Hecker's transverse strap to include a sliding glider mechanism between the transverse strap and the forehead rest, as taught by Berthon-Jones, for the purpose of providing adjustment for the user to enhance comfort.

15. Claim 81 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ging/Jestrabek-Hart, as applied to claim 70 above, in further view of Landis et al. (5,697,715).

Regarding claim 81, the modified Ging discloses a support strap and a conduit, but is silent regarding that the conduit includes a flexible tube connector and the support strap is connected to the flexible tube connector to support the conduit. However, in fig. 2 Landis teaches a support strap 26 connected to a flexible tube connector (118 hook and loop). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the modified Ging's support strap connection point with a flexible tube connector (hook and loop), as taught by Landis, for the purpose of providing a secure attachment.

### ***Response to Arguments***

16. Applicant's arguments filed 8/13/10 have been fully considered but they are not persuasive. Applicant argues on page 8 that Jestrabek-Hart does not support the conduit to hang away from the mask. However, Jestrabek-Hart's strap in fig. 13 modifies Ging's downward extending conduit 310 by forming a loop around the conduit and pulling the mask inward towards the user's face providing a better seal and comfort to the user. The conduit still hangs away from the headgear and mask since it extends vertically downward.

17. On page 9, applicant argues that Ging does not disclose a sliding connection between the headgear and the interface when the interface is engaged with the user.

However, in fig. 1 Ging discloses connection 128 which indeed slides between headgear 140 and the interface 40, when in use. On page 10 applicant argues that Ging does not provide a sliding connection that allows a user to move their head without dislodging the interface or changing the position of the interface. However, if a user wearing Ging's mask were to move their head the headgear and mask would not dislodge or change positions.

### ***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fecteau et al. (2002/0078953) to a mask with sliding connection 46 and Gradon (2002/0014241) to a mask with sliding connection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL YOUNG whose telephone number is (571)270-1481. The examiner can normally be reached on mon-fri 8 am - 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 3771

/Justine R Yu/  
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